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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,976	04/30/2001	Robert Joseph Panek JR.	TCO1-102US	2953

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 04/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/845,976

Applicant(s)

PANEK, ROBERT JOSEPH

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 positively recites the container and door when the container and door were not part of the subject matter of the subcombination of the carrier of claim 1. The scope of claim 2 can't be determined because it can not be determined if the container and door are part of what is being claimed (the combination of the container and the carrier) or if the container and door are intended to be used with the subcombination of the carrier and the container and door were meant to be functionally claimed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 8, 10 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Marek.

Marek discloses a carrier configured to hold a container having a door mounted for reciprocation between opened and closed positions. The carrier comprising a mobile body (the side walls and bottom of Marek's protective container and the body is mobile insofar as the protective container can be slid along a floor surface) adapted to receive the container and an extension (the cable 58, door 50 and flange 56) coupled to the body for reciprocal movement

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with respect to the body, said extension being adapted for engagement with the hypothetical door of the hypothetical container because parts of the door 50 could be attached to the hypothetical door of the hypothetical container, and the reciprocal movement of the extension being adapted to reciprocate the hypothetical door of the hypothetical container between opened and closed positions. A lever and foot pedal (70) and springs (60,62) complement the functionality of the extension.

Claims 1-3, 5, 7, 8, 10 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Patey.

Patey discloses a carrier in combination with a container having a door mounted for reciprocation (movement back and forth) between opened and closed positions, the carrier comprises a mobile body (10) which receives a container (either a container formed by a pivoted member consisting of front wall 28, platform 22 and corner members 34, 36 of one of containers 72, 74) and a door (lid 18) and an extension (60) coupled to a lever/foot pedal (54). When the lever/foot pedal is pressed the extension moves upwardly creating two pivotal movements, a first movement pivots lid 18 about its hinge 20 a second movement pivots the pivoted member about hinge point 47, this second movement creates a sliding movement of the lid with respect to the pivoted member and containers 72, 74.

Claims 12-14, 17, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Rowe.

Rowe discloses a container system comprising a container (21) having a door (lid 23) mounted for reciprocation (movement up and down) between open and closed positions, the door being mounted to slide with respect to the container as the lid's skirt slides relative to the upper

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rim of the container into a closed position. A carrier having a body (14, 16, 17, 18, 20) adapted to receive the container and an extension (22, 24, 25, 28, 30, 32, 34) coupled to the body and for reciprocal movement with respect to the body, the extension engages the door at point 36, and the reciprocal movement of the extension being adapted to reciprocate the door of the container for sliding between open and closed positions.

Claims 1, 2, 10, 11 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Sulcek.

Sulcek discloses a carrier configured to hold a container (15) having a door (17) mounted for reciprocation between opened and closed positions, the carrier comprising a mobile body (12) adapted to receive the container and an extension coupled to the body for sliding within a rail attached to the body.

Claims 1, 2, 10-13, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fink.

Fink discloses a container system comprising a container (70,71) having a sliding door (14) mounted for reciprocation between opened and closed positions, the door being mounted to slide with respect to the container; and a carrier configured to hold said container, the carrier comprising a body (12) adapted to receive the container and an extension (handle 16) coupled to the body through the door (14) and in engagement with the door, the extension coupled for reciprocal movement with respect to the body, the reciprocal movement of the extension being adapted to reciprocate the door of the container for sliding between open and closed positions.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marek in view of Baker.

Marek discloses the invention except for the locking member and barrier. Baker teaches a locking member and barrier (30) which is positioned over the foot pedal to lock the foot pedal so that it can't be depressed. It would have been obvious to add the locking member and barrier to Marek to prevent inadvertent and unauthorized opening of the door of a container within a carrier.

Claims 12-16 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fink in view of Marek.

Fink discloses the invention except for the lever and springs. Marek teaches a carrier configured to hold a container having a door. Marek includes a body (the side walls and bottom of the container) and an extension (the cable 58, door 50 and flange 56). A lever and foot pedal (70) and springs (60, 62) complement the functionality of Marek's extension. It would have been obvious to replace Fink's door with the lid and door of Marek in order to provide a partially restricted access to the container to prevent an excessive release of waste odor, gas or germs to the atmosphere when the container is opened. It would have been further obvious to replace the handle extension of Fink with the cable (58), springs (60, 62) and foot pedal (70) of Marek to provide a convenient means to open and close the container when the user's hands are full and the gripping of a handle would be awkward.

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Claims 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fink in view of Marek as applied to claims 12 and 14 above, and further in view of Baker.

The combination discloses the invention except for the locking member and barrier. Baker teaches a locking member and barrier (30) which is positioned over the foot pedal to lock the foot pedal so that it can't be depressed. It would have been obvious to add the locking member and barrier to the combination to prevent inadvertent and unauthorized opening of the door of a container within a carrier.

Applicant's arguments filed February 12, 2002 have been fully considered but they are not persuasive.

Applicant states that the Marek reference fails to suggest an extension adapted for engagement with a door of a container received within the body. The examiner believes that there is no requirement for the reference to state any such suggestion. Claim 1 includes a mobile body and an extension. The extension being adapted to engage the door is a functional recitation and the extension must only be capable of being connected to a hypothetical door of a hypothetical container placed within the carrier's mobile body. Therefore, any hypothetical container with any hypothetical door would be capable of being connected to the extension such that movement of the extension would also move the door between opened and closed positions.

With regard to statements made in reference to Fink, Fink discloses a handle (16) that defines the extension. The extension (handle 16) is coupled to the body through the door (14).


**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.

  
Stephen Castellano  
Primary Examiner  
Art Unit 3727

April 11, 2002